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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1860

CLARENCE H. GOINGS,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent State of New Jersey respectfully requests that this Court deny the petition for a writ of certiorari, seeking review of the judgment of the Superior Court of New Jersey, Appellate Division, in this case.

Opinions Below

The orders of the New Jersey Supreme Court denying petitioner's petition for certification and appeal are reported at —— N.J. ——, —— A.2d —— (February 26, 1980) and appear as petitioner's appendix B, pages

6a to 7a. The opinion of the Superior Court of New Jersey, Appellate Division, not reported, appears as petitioner's appendix A, pages 1a to 5a. The Superior Court of New Jersey, Law Division, Bergen County, did not issue a written opinion; its oral ruling denying petitioner's motion to suppress evidence appears in the transcript of September 12, 1978 at pages 140 to 151.

Question Presented

Whether the inventory exception to the Fourth Amendment's search warrant requirement extends to the search of a closed shoulder bag found within a vehicle's closed trunk where the impounding of the vehicle is lawful and the nonarrested driver has specifically declined an offer to remove the shoulder bag, preferring instead to leave it with the impounded vehicle.

Statement of the Case

Bergen County Indictment No. S-0621-78, filed April 26, 1978, charged petitioner Clarence H. Goings with possession of a pistol without the requisite permit, N.J.S.A. 2A:151-41 (count one) and attempted bribery, N.J.S.A. 2A:85-1 (count two). Prior to trial petitioner moved to suppress a pistol, leather shoulder bag and currency in the amount of $20,010 which were seized from his automobile on the occasion of the offenses referred to in the indictment. An evidentiary hearing was conducted on September 11 and 12, 1978, in the Superior Court of New Jersey, Law Division, Bergen County, before the Honorable Morris Malech, Judge, Superior Court. The relevant facts elicited at that suppression hearing demonstrated the following:

While patrolling in an unmarked vehicle at approximately 2:10 a.m. on December 7, 1977, Detectives John Schmidig and Marc Fenech of the Bergen County Police Department observed a brown Cadillac traveling at an excessive rate of speed. Upon following the Cadillac, driven by petitioner Clarence H. Goings, its sole occupant, for about one mile, they determined it to be travelling 70 miles per hour in a 50 mile per hour zone. Thereupon, the detectives activated their red flashing lights and pulled over petitioner's vehicle for the purpose of issuing a speeding summons.

Detective Schmidig approached the driver's side of the vehicle and requested petitioner's credentials while Detective Fenech stood by the passenger's side. Although petitioner tendered a valid driver's license and vehicle registration showing ownership of the vehicle by Vivian Peterson, petitioner's mother, the temporary insurance identification card he produced had expired three months earlier and thus was invalid. In response to the officer's inquiry, petitioner replied that the car belonged to his aunt, and he did not know whether it was insured. Detective Schmidig then advised petitioner that the vehicle would be impounded and towed because it lacked the requisite insurance, and that summons for the speeding and insurance card violations would be issued. Petitioner was not placed under arrest.

At that point the officers conducted a routine inventory of the vehicle. Detective Fenech, using a flashlight, visually inspected the interior portion of the vehicle to check for valuables. Solely for this purpose he checked the seats, glove compartment and floor area, discovering nothing remarkable. Meanwhile petitioner accompanied Detective Schmidig to the rear of the automobile and opened the trunk at the officer's direction. In the trunk

there was a brown leather shoulder bag which had two straps but no locks. One of the straps was fastened; the other one was not.

Petitioner was asked what the bag contained, to which he replied "personal things." Rather than opening it, Detective Schmidig specifically asked petitioner if he wanted to remove the bag from the car. Petitioner, however, rejected this offer and expressed his desire that the bag be left with the vehicle. Consequently, the detective, who was concerned primarily with valuables being left in the automobile, opened the bag to check and inventory its contents. The only reason the bag was opened was to inventory the personal items it contained since it was to be left in the vehicle in accordance with petitioner's preference. In the bag, Detective Schmidig unexpectedly discovered an extraordinarily large sum of currency (described by petitioner as $10,000 but subsequently determined to be $20,010) wrapped in a brown paper bag within a plastic bag.

Upon finding this extraordinary amount of money, Detective Schmidig notified Detective Fenech, who by this time had concluded his brief inspection of the car's interior, to conduct a more thorough search, a "double check," inside the vehicle to insure that no other valuables were present. Thereupon, as a result of these unusual circumstances, Detective Fenech conducted a more careful search of the car's interior. Specifically, he rechecked under the seats and ran his hand into the spring areas. He also checked under the dashboard by running his fingers along the lip by the steering column. Both officers testified that money and other items had been found under dashboards in the past, and it was this memory coupled with the discovery of the large amount of money in the trunk that prompted Detective Fenech

to check in this area. Behind the dashboard lip, the detective discovered an unregistered, fully loaded .380 caliber automatic pistol.

Upon its discovery, petitioner was arrested for possession of the pistol and advised of his rights. The B & K Towing Company, the private contractor utilized by the Bergen County Police Department, was called and its wrecker arrived to remove the impounded automobile to its lot. Petitioner was transported to police headquarters in the patrol vehicle. Enroute, the bribery offense was committed.

At the suppression hearing, it was also adduced that within the Bergen County Police Department, there exists a written order requiring that an inventory be routinely conducted for all vehicles which are impounded. Such standard inventory consists of a survey of a vehicle's exterior to check for damage, and its interior, including the trunk, to locate and itemize valuables. A standard report form or "inventory sheet" is completed with respect to each inventory inspection. At headquarters, the officers in the instant matter prepared their report and inventory sheet, and the two traffic summons were issued to petitioner. Items which were left in the vehicle were included on the inventory sheet; items which were removed from the automobile (the bag, the $20,010 and the unregistered weapon) were listed on a separate "evidence list" or "property sheet."

At the conclusion of the hearing, the court denied petitioner's motion to suppress the items taken from the automobile. Thereafter, following a short recess, petitioner entered a *retraxit* guilty plea to both counts of the indictment pursuant to a negotiated plea arrangement. On November 9, 1978, Judge Malech sentenced petitioner in accordance with the plea bargain to concurrent indeter-

minate terms to three years at the Youth Reception and Correction Center.

Petitioner appealed the denial of his suppression motion and conviction to the Superior Court of New Jersey, Appellate Division (Fritz, Kole, Lane, JJ.A.D.). That court affirmed the judgment below in a written opinion dated December 7, 1979. (Petitioner's appendix A, pages 1a to 5a). Thereafter, the New Jersey Supreme Court denied petitioner's petition for certification and appeal on February 26, 1980. (Petitioner's appendix B, pages 6a to 7a). The instant petition for a writ of certiorari to the Superior Court of New Jersey, Appellate Division, follows:

REASONS FOR DENYING THE WRIT

The facts of record do not legitimately permit resolution of the issue formulated by petitioner.

A. The inventory search was properly found constitutional under the holding in *South Dakota* v. *Opperman*.

As recognized in *Ker* v. *California,* 374 U.S. 23, 83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963), the states are not precluded from developing workable rules governing searches and seizures to meet the practical demands of the law enforcement community provided those rules do not violate the federal constitutional proscription against unreasonable searches and seizures. It is submitted that the State of New Jersey appropriately determined the instant search to fall within the inventory rationale approved in *South Dakota* v. *Opperman,* 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976). Moreover, the legitimate facts of record do not permit the proper formulation or resolution of the issue presented by petitioner as to whether an inventory search into closed containers within the trunk of an automobile is constitutionally valid.

The Court has ruled it constitutionally permissible for the police to routinely inventory the contents of a vehicle which they have lawfully taken into custody in *South Dakota* v. *Opperman, supra.** As articulated, such an inventory procedure serves three distinct needs: (1) it protects the owner's property while it remains in police custody, (2) it protects the police against claims or disputes over lost or stolen property, and (3) it protects the police from potential danger. *Id.* at 428 U.S. 369. Such standard inventories may properly include an examination of the customary places where documents are kept and valuables are temporarily stored, such as the glove compartment, See *Opperman* v. *South Dakota,* or the trunk. See *Cady* v. *Dombrowski,* 413 U.S. 433, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973); *United States* v. *Edwards,* 557 F. 2d 883 (5th Cir. 1978), *cert.* den. —— U.S. ——, 99 S. Ct. 458 (1978). Certainly, the reasonable and routine entry into the trunk in this matter falls squarely within the inventory inspection endorsed by this Court.

Petitioner claims, however, that intrusion into a sealed container, in this case an unlocked leather shoulder bag with one of its two straps fastened, was overbroad. This pure question of whether the scope of an inventory search extends into a closed container found within an automobile's trunk is not legitimately presented by the facts

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* The impoundment in this case was clearly valid under New Jersey law as the automobile lacked the requisite insurance. See *State* v. *Roberson,* 156 N.J. Super. 551, 384 A. 2d 195 (App. Div. 1978), certif. den. 77 N.J. 487, 391 A. 2d 502 (Sup. Ct. 1978). Moreover, petitioner stipulated to the validity of the impoundment in both the trial and appellate courts.

of record.* This is so because petitioner herein was specifically offered the opportunity to remove the unopened shoulder bag intact from the vehicle, and it was only when he rejected this offer and directed that the bag remain with the automobile that an inventory of its contents became necessary. Thus it was petitioner's own actions which precipitated and necessitated the inventory; he could easily have precluded any intrusion into his bag by accepting its custody when it was proffered, unopened, to him. Once he rejected the choice of removing his bag unopened, it was entirely appropriate for the detective to inventory the contents, not merely for petitioner's benefit, but to safeguard the interests of the police and towing company as well.

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* The State notes, however, that there is a split among jurisdictions as to whether or not the scope of an inventory search must be arbitrarily limited only to those items in plain view. Some jurisdictions so limit an inventory. See *e.g. State* v. *McDougal,* 68 Wis. 2d 399, 228 N.W. 2d 671 (Sup. Ct. 1975) (search of locked suitcases in trunk invalidated); *State* v. *Keller,* 510 P. 2d 568 (Sup. Ct. Ore. 1972) (search of closed and wire-tied fishing tackle box invalidated); *Mozzetti* v. *U.S. Superior Court of Sacramento County,* 94 Cal. Rptr. 412, 4 Cal. 3d 699, 484 P. 2d 84 (Sup. Ct. 1971) (search of unlocked suitcase invalidated). Others, however, have rejected this plain view limitation. See *e.g. State* v. *Walker,* 119 Ariz. 121, 579 P. 2d 1091 (Sup. Ct. 1978) (inventory search rationale was an alternate theory sustaining the search of an unlocked suitcase in a locked trunk); *In re One 1965 Econoline, Etc.,* 109 Ariz. 433, 511 P. 2d 168 (Sup. Ct. 1973) (inventory search of small suitcase and shaving satchel reasonable); *Williams* v. *State,* 557 P. 2d 135 (Sup. Ct. Wyo. 1976) (inventory of a duffel bag found in a locked trunk when screwdriver used to open trunk was legitimate); *Denson* v. *State,* 128 Ga. App. 456, 197 S.E. 2d 156 (Ct. App. 1973) (valid inventory revealed heroin wrapped in tin foil within an envelope in a bank folder containing other items).

Petitioner further seeks to implicate the inventory of the shoulder bag under this Court's recent holdings in *Arkansas* v. *Sanders,* —— U.S. ——, 99 S. Ct. 2586, —— L. Ed. 2d —— (1979), and *United States* v. *Chadwick,* 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977). Both of those cases dealt with warrantless probable cause searches, however, and not with inventory searches. The underlying rationale of those cases is thus totally inapplicable when analyzing an inventory procedure. As noted in *Chadwick,* in a noncriminal inventory search, probable cause to search is irrelevant and a warrant is not required. The constitutional reasonableness of an inventory search is determined on other bases. *United States* v. *Chadwick, supra* at 433 U.S. 10, n.5.

If petitioner is relying on these decisions for the proposition that certain "expectations of privacy" attended his shoulder bag, his reliance is not appropriately supported by the factual record presented. The record makes clear that petitioner exhibited no expectation of privacy in the shoulder bag whatsoever. Despite his claim that the detective did not offer him an opportunity to remove the bag (a factual claim resolved against petitioner by the State courts), by his own admission at the suppression hearing he indicated that in fact he had no objection to the inventory procedure and the inspection of the bag:

> Q. What did you want done with the bag at that point that the officer was holding the bag?
>
> A. [Petitioner] He could have gave it to me if he wanted to. If he would have given it to me I would have kept it. *I would have opened it and showed him what was in it if he wanted to know.* (transcript of September 12, 1978, p. 109-7 to 12, emphasis supplied).

The fundamental inquiry in any search or seizure, of course, is whether it is reasonable under all the circumstances. See *Cooper* v. *California,* 386 U.S. 58, 87 S. Ct. 788, 17 L. Ed. 2d 730 (1967). Although Detective Fenech had concluded his brief visual inspection of the seats, glove compartment and floor area by the time Detective Schmidig had found the $20,000 in the shoulder bag, the unusual discovery of such a considerable sum in a place where it would not ordinarily be kept certainly and reasonably suggested that a more careful inspection was essential to insure that no other valuables were secreted in the vehicle. The subsequent recheck of the interior, while more thorough, was but minimally intrusive. Specifically, Detective Fenech now ran his hands under the seats and under the dashboard, where the loaded weapon was discovered. The inspection remained an inventory procedure, however, and was not "metamorphasized" into a warrantless probable cause search. Both officers testified that money and other items had been found under the dashboard in the past. Thus while this area might not always be within the scope of every ordinary inventory situation, in the instant matter, when the unexpected discovery of the large sum of money triggered the memory of the dashboard area concealing money and other items in the past, the officers were justified by the situation confronting them in checking this area to locate and itemize valuables. The State maintains that the New Jersey courts correctly determined the instant procedures were both reasonable under the peculiar facts of this case and constitutionally authorized under the inventory rationale of *South Dakota* v. *Opperman.* As such, there is no need for this Court to grant certiorari to address a manufactured issue concerning whether the scope of an inventory search extends to a closed container within the trunk of an automobile.

Moreover, petitioner's application would seem to suggest that the state courts of New Jersey are either unable or unwilling to deal with the issue of inventory searches and the limitation of unreasonable, unconstitutional inventory procedures. Such is not the case. This State is ever vigilant in this area, and most recently has addressed the very issue of the permissible undertaking of an inventory inspection following lawful impoundment in *State* v. *Mangold,* —— N.J. ——, —— A. 2d —— (Sup. Ct. May 19, 1980). In fact, *Mangold* may very well impose a more restrictive criterion than mandated by the federal Constitution, since the Supreme Court of New Jersey has ruled that law enforcement officials must afford the owner or permissive operator the opportunity to remove or make other arrangements for his possessions prior to the undertaking of an inventory of a lawfully impounded vehicle. Consequently, for the additional reasons that the State of New Jersey is vigorously protecting those rights guaranteed by the Fourth Amendment, we submit that the petition for a writ of certiorari is not warranted and should be denied.

B. The inventory procedure was routine within the meaning of *South Dakota* v. *Opperman.*

Within the Bergen County Police Department, there is a written order requiring that an inventory be routinely conducted for all vehicles which are impounded. Such standard inventory consists of a survey of the vehicle's exterior to check for damage, and its interior, including the trunk, to locate and itemize valuabes. A standard report or "inventory sheet" is completed with respect to each inventory inspection.

Petitioner urges that the absence of more specific criteria defining the precise manner and scope of such an inven-

tory inspection renders the instant inventory procedure constitutionally infirm. Contrary to his argument, however, there is no requirement that instructions or procedures more detailed than those existing in Bergen County be promulgated by the local law enforcement agency to demonstrate that an inventory search is routine, in accord with standard procedure and thus constitutionally valid. The State submits that the inventory procedure herein, which fully comports with the one described and approved in *South Dakota* v. *Opperman, supra,* at 428 U.S. 380 n.6, 384 n.11 (Powell, J., concurring), and which was required with respect to all impounded vehicles was "routine." The police officers had no discretion at all with respect to which vehicles to inventory, and the interior and trunk portions of the vehicle were standard areas to be covered. Beyond that, it would be impossible to refine the precise limits of such an inspection, since the unique circumstances of an individual case might properly require a check of a particular area not necessarily involved in another situation. Naturally, of course, an officer's discretion is not absolute, and judicial review is always an available remedy for unreasonable actions.

CONCLUSION

For the reasons set forth herein, it is respectfully urged that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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